

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PUCEL ENTERPRISES, INC.

Opposer,

v.

GRIZZLY INDUSTRIAL, INC.

Applicant

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) OPPOSITION NO. 123,506  
) CANCELLATION NOS. 31,984;  
) 32,024; 32,025  
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01-11-2003

U.S. Patent & TMO/TM Mail Rpt. Dt. #40

PUCEL ENTERPRISES, INC.'S (MANUFACTURER OF GRIZZLY® EQUIPMENT)  
BRIEF IN OPPOSITION TO GRIZZLY INDUSTRIAL, INC.'S MOTION TO COMPEL  
DISCOVERY

Grizzly Industrial, Inc. ("Applicant") has filed the instant motion to compel with the intention to mislead. Pucel, manufacturer of Grizzly ® Equipment, has sold material handling equipment for more than 50 years and has filed oppositions and cancellations to protect itself from the outright theft and use of its registered marks by Applicant. Applicant complains about the adequacy of the responses to requests and interrogatories without justification.<sup>1</sup>

**DOCUMENT REQUESTS**

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<sup>1</sup> With the exception of documents relating to third party advertisement of Grizzly® Equipment, manufactured by Pucel, all the documents have been provided. These documents are being gathered and will be sent to Applicant soon. The Board will be so notified when that is done. Applicant's complaints in regard to the interrogatories are unjustified as they are questions best answered in deposition.

An examination of the requests for production of documents follows. Grizzly Industrial, Inc. complains that Pucel, manufacturer of Grizzly® Equipment, has not identified by document control number any of the documents allegedly produced in response to request nos. 1 and 2. Pucel, manufacturer of Grizzly® Equipment, has provided the following documents to Grizzly Industrial, Inc: Z0-Z408 and Z500-Z735.<sup>2</sup> Z500-Z735 are documents that were selected for copying by applicant during its December 16, 2002 document inspection at the Pucel, manufacturer of Grizzly® Equipment, facilities. Applicant also took photographs of the Grizzly® Equipment packages and boxes.

Some of the documents supplied by Pucel, manufacturer of Grizzly® Equipment, are multipage catalogs but yet they bear only one bates-stamped number. In other words, Pucel, manufacturer of Grizzly® Equipment, has supplied many more pages of catalogs and the like to Grizzly Industrial, Inc.

Pucel, manufacturer of Grizzly® Equipment, submits that the documents produced are self-evident as to the requests to which they respond. Pucel, manufacturer of Grizzly® Equipment, insofar as the interrogatories go, further submits that the documents produced are responsive to some of the interrogatories complained about under Fed. R.

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<sup>2</sup>Grizzly Industrial, Inc. complains that Pucel, manufacturer of Grizzly® Equipment, has not properly identified its documents with respect to the requests to which they respond yet Grizzly Industrial, Inc. has provided over 9000 documents to Pucel, manufacturer of Grizzly® Equipment, and has not identified them in relation to the requests of Pucel, manufacturer of Grizzly® Equipment.

Civ. P. 33(d). Pucel will submit all of the documents it has produced to the Board if it so desires to determine that the documents such as the catalogs, advertisements, invoices, brochures, packages, promotional material, searches, etc.. are what they appear to be and are obviously in response to requests asking for those documents.

Pucel, manufacturer of Grizzly® Equipment, still further submits that it opened its doors to a two day inspection (December 16 and 17, 2002)<sup>3</sup> of Grizzly® Equipment documents including 200 bankers boxes which comprised 80,000 to 100,000 documents that were kept in the usual course of business<sup>4</sup>. See, Fed. R. Civ. P., R. 34(b). The undersigned met Applicant's counsel to assist in the initial examination of the documents and to help with lifting and moving the records for inspection. Mr. Anthony Mlakar, Mr. Robert Mlakar, Ms. Rita Mlakar and Ms. Anne Mlakar assisted Applicant's counsel throughout the time of the inspection. Further, Pucel, manufacturer of Grizzly® Equipment, submitted several cardboard boxes bearing the registered Grizzly® trademark and the registered Grizzly Bear Symbol® of all different shapes and sizes at their factory on December 16, 2002. Applicant's counsel photographed the boxes as she desired.

Applicant makes the representation in its Brief, hereinafter "App. Br. Pg. 3" that: "Pucel has refused to allow adequate time to inspect the documents or, even, to allow

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<sup>3</sup>Although two days were allowed to inspect the Grizzly® Equipment documents, for unknown reasons only one day was used by Applicant's counsel.

<sup>4</sup>Although many invoices bearing the Grizzly® Equipment trademarks were included in the 200 or so boxes, there were many other (non-invoice) business documents related to the Pucel Grizzly® Equipment business as well.

Grizzly to copy the documents so they can be digested in the fullness of time.” It is in fact sad that Applicant’s counsel would make such an allegation given the fact that Pucel, manufacturer of Grizzly® Equipment, opened its doors for two straight days for the inspection but yet only one day was used by Applicant for the inspection! Anyone that has ever performed a document inspection knows that it is a painstaking, time consuming task and it is abundantly clear here that this motion to compel was filed unnecessarily and not in good faith. Applicant was given two full days to examine documents and packaging for the goods but chose not to use them and now wants to claim that Pucel, manufacturer of Grizzly® Equipment, has refused to allow adequate time to inspect the documents or, even, to allow Grizzly to copy the documents so they can be digested in the fullness of time.

To add insult to injury, applicant seeks relief because of an alleged failure to “thoroughly search its records for all information properly sought in the request”, App. Br. Pg. 3. , for a request for which objection has been made such as:

**REQUEST FOR PRODUCTION NO. 1**

A sample copy of every product, label, wrapper, package, box, brochure, sign, catalog, stationery, purchase order, invoice, advertisement, promotional material and other printed matter previously used and currently used in connection with marketing, advertising, promoting, distributing and selling products in connection with opposer’s marks GRIZZLY and GRIZZLY BEAR SYMBOL.

**Response to Request for Production No. 1:**

Objection. This request is vague and overbroad. Notwithstanding this objection, some of the documents responsive to this request are being transmitted with this response. Other documents responsive to this request will be produced at the Pucel offices in Cleveland, Ohio for inspection and possible copying.

First, with the exception of documents relating to third party advertisement of Grizzly® Equipment, manufactured by Pucel,<sup>5</sup> all the documents have been provided. Pucel has provided gross sales and advertising expenses for sales of Grizzly® Equipment (Z407) which satisfies request nos. 11 and 12, for example. Documents which refer or relate to instances of confusion, likelihood of confusion, mistake or deception as sought in request no. 13 have been produced and are obvious to applicant.

The request was objected to because it is impossible to satisfy. Every product, label, wrapper, package, box, brochure, sign, catalog, stationery, purchase order, invoice, and advertisement previously used was in fact an overbroad request and now Applicant wants to complain because they didn't want to take the time to look through all of the records provided to them. Instead, applicant complains that somehow Pucel, manufacturer of Grizzly® Equipment, did not fulfill its duty to thoroughly search its records for all information properly sought in the request. All such information was provided to applicant during its inspection at the plant, and counsel for applicant apparently realizing that their overbroad request had been met, decided it was too much work to do the overbroad inspection. Therefore, Applicant is not entitled to any relief in regard to the requests for documents.

## **INTERROGATORIES**

Applicant essentially complains that the answers to the interrogatories are just too

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<sup>5</sup> These documents are being gathered and will be sent to Applicant soon. The Board will be so notified.

short. Pucel, manufacturer of Grizzly® Equipment, respectfully suggests that the interrogatories have been fully answered and that additional or derivational inquiries are best made in a deposition of Pucel, manufacturer of Grizzly® Equipment. For instance, applicant complains in regard to interrogatory no. 7 stating that more specificity in the answer is required.

#### **INTERROGATORY NO 7**

Identify the channels of trade in which Opposer's products have been, currently are, or will be sold, distributed, advertised or otherwise marketed or promoted in connection with the mark GRIZZLY.

#### **Response to Interrogatory No. 7:**

Channels of trade - through distributors, dealers and end users, through distribution of catalogs, brochures flyers, internet web site and by direct contact with these distributors, dealers and end users.

Pucel, manufacturer of Grizzly® Equipment, attempts to answer every interrogatory as fully as required. Applicant has recently propounded another interrogatory (No. 27) separately from the one complained about (No. 7) which apparently seeks some of the information it believes it did not receive in response to interrogatory no. 7.

#### **INTERROGATORY NO. 27**

Describe Pucel's advertising and promotion efforts, including identification of all magazines or trade journals, number of catalogs printed, number of catalogs distributed, editions of catalogs prepared, and the method of distribution, for each year since 1990.

RESPONSE: Objection. Pucel has already produced copies of all of its catalogs that it has developed and distributed. Notwithstanding the objection, Pucel distributes approximately 15,000 of its catalogs per year. GRIZZLY® Equipment, manufactured by Pucel, is sold by approximately two thousand outside persons and firms which sell or

market products in connection with the GRIZZLY mark. Pucel and others advertise and promote GRIZZLY® Equipment manufactured by Pucel through various websites, various catalogs, distributors, brochures, and flyers. Some of the outside firms include the Thomas Register, Global Equipment, Inc., C & H Distributing, and Specialized Mail Order (SMO). It is believed that Global Equipment, Inc. distributes more than a 1,000,000 catalogs each year which include GRIZZLY® Equipment manufactured by Pucel. It is further believed that SMO distributes more than a 1,000,000 catalogs each year which included GRIZZLY® Equipment manufactured by Pucel.

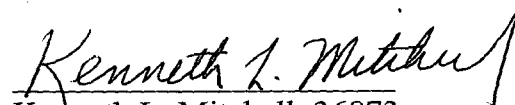
As is evidenced by the response to interrogatory No. 27, all of the interrogatories have been fully answered.<sup>6</sup> Applicant is seeking responses to interrogatories which it should be asking in deposition. See, for example the complaint with respect to interrogatory no. 13 asking for a narrative.

In regard to interrogatories 9 and 10, Pucel, manufacturer of Grizzly® Equipment, has provided sales and advertising expenses for each year back to 1951.

It is respectfully suggested that no relief be granted in regard to the interrogatories.

Respectfully Submitted,

Woodling, Krost and Rust

  
Kenneth L. Mitchell, 36873

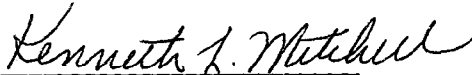
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<sup>6</sup>Pucel, manufacturer of Grizzly® Equipment, has completely and timely responded to Applicant's Request for Admissions 1-28, Interrogatories 21-38 and Requests for Production of Documents 23-26 served December 6, 2002. Pucel, manufacturer of Grizzly Equipment is not aware of and/or did not receive the discovery allegedly served on Aug. 5, 2002 while this consolidated case was stayed by the Board. Pucel, manufacturer of Grizzly® Equipment, respectfully requests Applicant to reserve the discovery of Aug. 5, 2002 if it is not the same as the discovery served Dec. 6, 2002.

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#### CERTIFICATE OF SERVICE

The foregoing PUCEL ENTERPRISES, INC.'S (MANUFACTURER OF GRIZZLY® EQUIPMENT) BRIEF IN OPPOSITION TO GRIZZLY INDUSTRIAL, INC.'S MOTION TO COMPEL DISCOVERY was served upon Joseph Schmidt, Esq., Michael, Best & Friedrich, 401 North Michigan Avenue, Suite 1900, Chicago, Illinois 60611 by ordinary U.S. Mail and fax 312-222-0818 this 11th day of January, 2003.

  
Kenneth L. Mitchell

#### CERTIFICATE OF MAILING

I hereby certify that the foregoing PUCEL ENTERPRISES, INC.'S (MANUFACTURER OF GRIZZLY® EQUIPMENT) BRIEF IN OPPOSITION TO GRIZZLY INDUSTRIAL, INC.'S MOTION TO COMPEL DISCOVERY was mailed to the Commissioner for Trademarks, Box TTAB, 2900 Crystal Drive, Arlington, Virginia 22202 by Express Mail Post Office to Addressee EV 173849864 US this 11th day of Jan. 2003.

  
Kenneth L. Mitchell